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From: YScuba [mailto:YScuba@californiadiivers.com]

Sent: Friday, February 25, 2005 5:42 PM

To: Melissa Miller-Henson

Subject: Comments on the Preliminary Draft, cleaned up

Dear Melissa,

Attached is the electronic copy of the Comments on the Preliminary Draft Master Plan Framework. All the Reds and the Greens are now my comments. Sorry for the confusion at the Task Force meeting, but I finished it really late into the night, and just didn't have the energy to clean it up then. Please pass on my apologies to the Task Force members, and my thanks to you and the staff for working so hard on this Master Plan. Kindly,  
Jesús

**California Marine Life Protection Act Initiative  
Comments on the Preliminary Draft Master Plan Framework**

**Submitted by Jesus C. Ruiz  
Statewide Interest Group  
Recreational SCUBA Diver Representative**

**To  
The Blue Ribbon Task Force  
On  
February 22, 2005  
In Monterey, California**

**CALIFORNIA MARINE LIFE PROTECTION ACT INITIATIVE:  
PRELIMINARY DRAFT MASTER PLAN FRAMEWORK**

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## **Section 1. Introduction**

The rich natural heritage of California has supported commercial and recreational fisheries, which have provided consumers with a healthy source of high-quality protein, recreational anglers with a unique experience, and many coastal communities with sources of employment and revenues. California's nearshore waters have become among the top destinations for recreational SCUBA divers from around the world.

*\*While some spearfishing tournaments bring spearfishermen from throughout the Country, the numbers are relative small, and not held in California annually.*

### ***Master Plan Framework***

It is important to emphasize that this master plan framework is meant to guide decision making about MPA network components in individual regions. Specific application of this guidance will depend upon the physical, biological, social, and economic conditions in a particular region. Over the coming months, more specific guidance will be provided initially in support of the development and evaluation of alternative proposals for an MPA network component on the central coast. This more specific guidance will expand upon topics identified in the master plan framework, including the design and evaluation of different types of MPAs as well as monitoring and evaluation, for instance.

The central coast effort will provide concrete experience with applying the Master Plan Framework and this more specific guidance to a specific area. This experience, in turn, may lead to recommendations to adjust the Master Plan Framework and the guidance on specific topics. In this way, the Master Plan Framework will serve as the foundation for an evolution of practice that adapts to new information.

*\* No recommendations for added language or changing of wording, but a concern about the "adoptive management" process. It has been the position of some stakeholder groups that if an immediate improvement is not displayed (with in a year of two), that Marine Reserves should be dismantled and opened up for recreational fishing again. I am aware that this particular issue is addressed in another part of the Master Plan, but I am referring to the issue of weakening the Master Plan foundation. Please give consideration to adding some kind of language that could be added to this paragraph to assure that this "living document" is not gradually changed through Regional Stakeholder Group recommendations down the line that would weaken the language or intent of the Master Plan.*

## **Section 2. Design of MPAs and the MPA Network**

Each component ultimately will be presented as a series of options, developed in a regional process involving a regional stakeholder group and a sub-group of the Master Plan Science Advisory Team, with a preferred alternative identified by DFG.

\*.... “with a preferred alternative identified by the DFG.” This sentence could possibly be read to mean that the DFG will be the sole body to determine which of the many alternatives developed by the Regional Working Group process, will become the “preferred” alternative, and thus the Regional component. A strict reading of this line does not explain, nor does it allow for a “regional working group process” to rank the “options of alternatives” with one being labeled as THE preferred alternative. If this is the writer’s intent, it is written clearly. If not, I would suggest more descriptive sentences. If it is the intent of the Blue Ribbon Task Force to allow the DFG to select and ultimately choose the “preferred alternative,” thus choosing each and every Regional Component, then, may I suggest, that this process may lend itself to be close to the process of the first MLPA process, where the maps were presented for discussion only, and were perceived as the done maps. In the second MLPA Regional Working Group for the Monterey Area, the stakeholders had recommended that the “alternatives” coming out of that workshop, would be ranked, and that it was the desire of the stakeholders that “ALL” of the alternatives be forwarded to the Fish and Game Commission, to allow for “the last chance” for a stakeholder group to persuade the ultimate decision makes, to see their alternative, as the best option. Also, what role will the Blue Ribbon Task Force play in the selection of the “preferred alternative?” Since this is the most political body in the process, will the BRTF make any recommendations to the DFG as to which alternative should be chosen as the “preferred alternative” before it goes to the Fish and Game Commission, or will it be the other way around? Will the DFG or the Central Coast Project Director (a DFG Staff) be making a recommendation to the BRTF as to which should be the preferred alternative? If the MLPA Initiative staff makes such recommendations to the BRTF and they refer the matter on the DFG to prepare the recommendations for the Fish and Game Commission, thus the DFG makes a “revised” recommendation to the F&G Commission, after receiving an “unfavorable” one from the BRTF. Please allow me to state a specific “possible” scenario without evidence to state it as fact. It is my understanding that in one of the previous MLPA processes, the science team submitted detailed maps with boundaries as to where the MPAs should be, including some specific landmarks. It is my understanding that the DFG “adjusted” these boundaries before printing these “recommended MPA boundaries” after they (DFG) had received addition “input” from influential institutions.

May I suggest that the above sentence, or paragraph be clarified, so that all stakeholders and institutions know exactly whom will have the decision making privilege to select the “preferred alternative,” and what the actual “life time” of the “non-preferred” alternatives will be? Will all recommended alternatives eventually reach the Fish and Game Commission, or will they die a lonely death before the BRTF, or in the hands of the Central Coast Project Director, etc.?

In developing regional network components, the aim will be to ensure that the design, management, and monitoring of the individual MPAs within the components, are closely and explicitly related to one another, to regional goals and objectives, and to the MLPA.

\* I would like to suggest some wordsmithing for clarification purposes. The wording in this sentence, and in following paragraphs is confusing with the use of the word ALTERNATIVE. The words “ preferred alternative” and “alternative components” have two different meanings, but the mind gets lost in trying to follow the meaning of “alternatives.” It would appear that once

a “preferred alternative” is designated by the Fish and Game Commission to be an MPA regional component, that it is not an alternative any longer. It might be clearer to refer to the different MPA options advanced by each regional working group as “alternative MPAs options” and a regional option once adopted by the Commission as an MPA Components, or something along this line.

## Process for Developing Alternative Statewide MPA Networks

Throughout the development of alternative proposals for MPA network components, an emphasis must be placed upon using the best readily available science, as required at FGC subsection 2855(a). The MLPA does not require complete or comprehensive science, but rather the level of science that is

*\*practicable.\**

\* The word practicable is understood by most common and reasonable men. However, this is the kind of wordsmithing that while vague enough to allow for flexible creative thinking, will also allow certain stakeholders to hang their hat, or their cause, on. In the previous Monterey Regional Working Group, some stakeholders were aspiring to have MPAs abolished if “science” could not prove that fish were making a come back within a two-year period. If some Rockfish take as long as 5 to 7 years to mature, it is inconceivable that an MPA should be abolished within a five year period. If funding is not available to do “practicable” monitoring and evaluation, be assured that some stakeholders will object to the closing down of “their” territory based on falsehood, and will demand the scraping of MPAs until funding is available to do practicable monitoring. Perhaps more strong, or enduring language, that would meet the test of time and not provide legal fuel to future lawsuits, might be wise?

This process should also draw upon the knowledge, values, and expertise of local communities and other interested parties. At FGC subsection 2855(c)(1)-(2), the MLPA specifically requires that local communities and interested parties be consulted regarding:

- (1) Practical information on the marine environment and the relevant history of fishing and other resources use, areas where fishing is currently prohibited, and water pollution in the state's coastal waters.
- (2) Socioeconomic and environmental impacts of various alternatives.

AND: Additional considerations that might be considered by the Regional Working Groups are:

(3) Areas of other forms of extractions, besides fishing areas. Areas of take for educational purposes, scientific take, commercial scientific collection and aquarium collection.

(4) Areas which local municipalities have declared or expressed an interest in declaring a “no take” zone.

(5) Areas with special intrinsic value, such as areas commonly visited by tourist, or of special aesthetic value, areas of frequent recreational usage, lack recreational SCUBA diving, surfing, kayaking, bird and whale watching.

The above comments are intended to bring facts into the discussion during the Regional Working Groups. Certain institutions have been reluctant to disclose exactly where or how much extractive activities they contribute to the overall local take. By having all relevant interest information from the onset, it would seem to reduce potential conflict in interested areas on “extractive” vs. “non-extractive” stakeholders.

Also, some “non-extractive” recreational activities might benefit from the placement of MPAs, marine reserves in particular, to improve their recreational opportunities, as the ecosystem is concurrently healing. Siting of recreational areas should be seen as a potential positive activity, and not considered absolutely as an adverse human impact.

As described in the “Strategy for Stakeholder and Interested Public Participation” adopted by the MLPA Blue Ribbon Task Force (Appendix G), there are a variety of methods and activities for meeting these requirements. More generally, as the process for developing alternatives for gets underway in each region, a regional working group of stakeholders will be convened.

\*Suggest striking “network components” for the sake of clarity to the common reader, as previously explained above.

This regional working groups will be composed of an equal number of extractive and non extractive stakeholders, and serve as a focus for regional discussions regarding the major aspects of designing MPA network component alternatives, including setting goals and objectives and developing options on the type, location, size, and boundaries for individual components of the network.

\*The initial MLPA process had regional working groups evenly divided among the consumptive and non-consumptive users. Using the word “consumptive” usually refers to “eating a fish” and thus did not actually cover all stakeholder activity, though the intent was understood. Extractive is a more accurate reflection of stakeholder activity. This term would include scientific take, aquaria collection, commercial scientific collection, as well as take by science students for the purpose of their educational experience, and not genuine “science research.” After the first MLPA go round with “political turmoil,” the stakeholder nomination process was altered to exclude the “consumptive” and “non-consumptive” distinction. This led to a discrepancy in representation at the region working group level, resulting in lopsided input on issues of concern. The Monterey Regional Working Group never got around to selecting a “preferred alternative,” but had we voted, it is certain that a more pro extractive alternative would have risen to the surface as the “preferred alternative.” I don’t know how, who, or what procedure would have been employed to select the “preferred alternative,” but this question of how the working groups will select the “preferred alternative” when the makeup of the working group is unrepresentative, remains a major concern to this stakeholder representative.



Once goals and objectives for the initial regional MPA proposal have been adopted, the primary activity of the regional process will be developing alternative approaches to meeting these goals and objectives for the review of the MLPA Blue Ribbon Task Force and the Fish and Game Commission.

\*Comments regarding the procedure of adopting the “preferred alternative” were made previously above. The concerns expressed were that in the previous passage, it was not clear which body will actually pick or select which “alternative” of the many developed by the regional working group, will be selected as the “preferred alternative.” If the regional working group will make the selection, then go to the sub-committee and full committee of the Science Team for comment only, then go to the BRTF for a “simple” adoption, then it is not clearly stated herein.

Current and anticipated human activities that may affect representative habitats should also be described generally and, if possible, spatially. These activities include aquatic activities, such as fishing and SCUBA diving, as well as terrestrial, such as development and non-point and point-source pollution.

\*Distinguish SCUBA diving from the term “diving or diver” commonly used by spearfishermen, which would be categorized within the “fishing” aquatic activity.

### **The Geographical Context of MPA Networks**

The timing for the development and adoption of MPA network components in the regions will be based on experience with the initial effort on the central coast, on findings of the long-term funding strategy, and continuing discussions.

\*I wonder whether a more affirmative declarative statement could be made regarding the “long-term funding strategy” and the continuing discussions? I am concerned that a weak posture on the probabilities of a continuing MLPAI after the establishment of the Central Coast Project, will leave the BRTF, the Resources Agency, and all involved with the impressions expressed by those that wish to delay the MLPA process. Claims have been made that once the “funders” of this process get “theirs,” the funds might dry up. In order to create a more positive and favorable desire to participate in good faith, might a more secured future be expressed?

### **General Design Features of MPA Networks**

At FGC subsection 2857(b), the MLPA also states that MPAs may aim to achieve either or both of the following objectives:

- (1) Protection of habitat by prohibiting potentially damaging fishing practices or other activities that upset the natural ecological functions of the area.

\*Does “other activities” refer to already existing non-extractive recreational activities, like SCUBA diving or Surfing? Is there a way to restate the above so that stakeholders wishing to



make a marine reserve an all “no access” reserve, if they can’t extract there are precluded from this action? Are certain non-extractive recreational activities grand-fathered?

- (2) Enhancement of a particular species or group of species, by prohibiting or restricting fishing for that species or group of species within the MPA boundary.

I’ve added “group of species” if this is what the writer has intended. Otherwise, it is ambiguous.

Baseline data needs for MPAs should be drafted for inclusion in the regional MPA management plan described elsewhere in the Master Plan Framework (see Endnote 3.1). Examples of such baseline information needs are:

- Status of recreational and commercial marine resources in the region
- Status of species in need of restoration
- Analysis of activities affecting living marine resources in the region
- Identification of non extractive recreational sites that would benefit by ecosystem restoration

Most references to recreational activity in the Preliminary Draft Master Plan Framework appear to be in context of potential or on-going adverse habitat impact. However, one of the goals of the MLPA is to improve recreational opportunities. The Master Plan might wish to take every opportunity to highlight encouragements for the improvement of aquatic areas commonly used for recreation, and which will most likely continue to be used as such upon the completion of an MLPP network component.

While the NFMP deferred to the MLPA process in designing and establishing networks of MPAs, it also identified key features of MPA networks that would contribute to the goals and objectives of the NFMP and the MLMA. Other fishery management plans should be reviewed for similar linkages.

TYPO: changed NMFP to NFMP

The benefits from MPA designation of an area may also be increased, and potential negative socio-economic impacts may be decreased, through zoning. For instance, a core zone within a candidate area may be designated a marine reserve, while the adjacent area is designated a marine park or a marine conservation area, thereby serving as a buffer and as a reference area for the core zone and other purposes (Salm et al. 2000; Kelleher and Kenchington 1992). Additional custom tailoring can be accomplished by protecting a core zone with different layers of the same kind of MPA. For example, a marine reserve can be buffered by a marine park listing a limited recreational catch, or specified gear. This same marine park can further be buffered by an additional marine park with a more extensive allowable recreational catch or additional varied fishing gear. The same may be feasible with the designation of conservation areas. A marine reserve may be buffered with a conservation area that may allow the take of only one or two species of highly valuable commercial take. This conservation area can

be buffered by another conservation area which would allow a more generous list of allowable take or additional commercial gear.

## The Design of MPAs

A state marine reserve prohibits taking living, geological, or cultural resources and must maintain the area “to the extent practicable in an undisturbed and unpolluted state” [PRC subsection 36710(a)]. The responsible agency may permit research, restoration, or monitoring. Such activities as boating, SCUBA diving, research, and education shall be allowed, to the extent feasible, so long as the area is maintained “to the extent practicable in an undisturbed and unpolluted state, unless the reserve is to be used as a control study area.” Such activities may be restricted to protect marine resources, unless the original purpose for the establishment of the reserve was for the improvement of recreational opportunities, then the “maintenance in an undisturbed” state should be considered a supportive consideration in the role of the reserve’s established primary purpose, the improvement of recreational opportunities.

### State Marine Reserves

Once set, goals and objectives will influence crucial design decisions regarding size, location, and boundaries. For instance, a marine reserve whose primary goal is protection of biological diversity may well have a different configuration than a marine reserve whose goal is enhancement of non extractive recreational opportunities, or the depleted fisheries (Nowlis and Friedlander 2004). Benefits for conservation of biological diversity appear to increase directly rather than proportionally with the size of reserves (Halpern 2003).

\*Insert “non-extractive recreational opportunities, or the” to reinforce this orphan MLPA goal

### State Marine Parks and State Marine Conservation Areas

As noted in Table 1 and elsewhere above, state marine parks and state marine conservation areas, hereafter called “marine parks” and “marine conservation areas,” differ from marine reserves to different degrees in their purposes as well as the type of restrictions. Unlike marine reserves, these two types of MPAs allow some level of fishing. The types of commercial and/or recreational restrictions on fishing may vary with the focal species, habitats, and goals and objectives of an individual MPA within a network. Where a goal is biodiversity conservation, restrictions on fishing may be different from those in an MPA where the primary goal is enhancing non extractive recreational opportunities.

\*Insert “non-extractive” to distinguish it from spearfishing diving, or pole fishing which both are “fishing” activities.

## Enforcement and Public Awareness Considerations in Setting Boundaries

Marine protected area boundaries should be straight lines that follow North-South and East-West coordinates while avoiding fractional latitude or longitude lines wherever possible. Likewise, any offshore corners or boundary lines should be located at easily determined coordinates. This is especially true if installation and maintenance of boundary marker buoys is not cost effective or feasible. Using depth contours or distances from shore as boundary designations should be avoided, if possible, due to ambiguities in determining exact depths and distances.

\*I'm wondering about the necessity of this recommendation. Most boaters now have GPS and depth finders. Surely, it is just as easy to read a depth finder and/or GPS as it is to read a compass to determine the boundaries of an MPA. If an MPA is running along the shore, and has two distinct land markers at both ends, is it not easier to find the outside boundary by reading a depth finder, or a GPS? Isn't the Ed Ricketts Underwater Park is a good example of where the outside boundary would be best served by a depth contour boundary?

## Section 6. Financing

**User and Concession Fees:** MPAs in some areas outside the United States have generated funding for management through fees on scuba diving tanks, for instance. Unlike the case of terrestrial parks where access is limited, access to most MPAs is quite open, creating great obstacles to insuring the collection of any fees. Where tank fees have been imposed, for instance, access is limited by a geography very different from that of California. For instance, in Bonaire, an island off Venezuela, fees for scuba diving in MPAs have been successfully imposed partly because the marine parks are in so isolated and limited a geographical area. When diving and other fees have been suggested as a source of funding of MPAs in the United States, they have been successfully opposed by diving groups, manufacturers, and other stakeholders.

\*In foreign countries where SCUBA diving is taxed, it's usually a country where SCUBA diving is a major tourist attraction and a major source of income. Bonaire is a totally isolated island where SCUBA diving is the major industry and one of their major sources of income. The tank isn't taxed, the visit is taxed. Upon arrival, the tourist buys Marine Park Access Pass that the diver carries with him/her the whole time they are on the island. Though the residents are also supposed to purchase an access pass, it's the tourist industry that supports their major industry. This kind of system would probably not work in California. If you attempted to charge an access fee into every MPA, you would have to spend the collection fees to administer the program, and would probably run a deficit. One of the greatest concerns that divers have about the creation of MPAs through the MLPA is the creation of more State Parks like Point Lobos. There is a fee to get into the park, a reservation process, a restriction of divers allowed to dive at anyone time, and hours of allowable diving is regulated. This is the worst of all options, and this type of fee imposition would be most likely resisted, and unpopular.

Commercial and recreational fishermen already pay license and other fees dedicated to supporting existing management and conservation of marine fisheries.

\*It is the general feeling of most recreational SCUBA divers, that if one extracts fish or other resources from the ocean, one should pay a fee for that resource. Most recreational SCUBA divers do not extract resources from the sea, and to ask for a user fee is not a popular notion. It is also a feeling that most commercial fishing is not assessed according to the value of the resources they take, and the fees they do pay, is passed onto the consumer. In some cases, commercial extractors and some recreational businesses, like CPFVs do not pay a fair share for the resources they extract. The contractual fees for the extraction of kelp are substantially low. Major companies are farming California's kelp beds, and paying less than a dollar per ton. This resource is then used to produce other products and retailed at substantial profit margins. The aquaculture industry is also substantially undercharged low fee rental agreements and taxation of their end product. While this might have been justified for assuring a new industry into our economy, many of these State contracts should be reassessed. Recreational abalone divers willingly offered to pay an additional fee for the take of abalone above and beyond the ocean fishing license. If additional fees for protecting the fish in MPAs are needed, recreational and commercial fishermen might be a source for additional funding.

Another idea is to raise the fee on barrels of oil imported to the state by a fraction of a penny, or reallocating a portion of fees currently levied.

\*Since the increased purchase of hybrid cars by Californians, there has been a decrease in revenue from the gas tax. This has caused a strain on the available monies for road construction and other budgetary items that are normally funded by the gas tax. The number hybrid cars are predicted to increase due to EPA regulations. This might be the environmental cause needed for an increase in fees on barrels of oil imported into the state. The moneys raised could be dedicated totally to environmental matters, which would not normally be funded. I believe the residents of California are presently environmentally aware enough to support such an increase, if their assured that the tax increases would be dedicated for environmental causes.

**Recreational Goods and Services Tax:** Assessing an excise tax on goods and services associated with nonconsumptive wildlife recreation have an intuitive appeal, given the phenomenal growth in nonconsumptive forms of wildlife and outdoor recreation and the precedent of excise taxes long levied on products associated with hunting and fishing. However, efforts to implement such taxes have met fierce industry opposition at the national and state level.

\*Of all the options mentioned in this Preliminary Master Plan Framework, this is the most appealing and the most sensible. The coverage should be not only non consumptive, but any form of ocean use, including the registration of boats, ocean related businesses, and ocean related merchandise. The further you have the taxation from the end user, the more tax you'll collect from all users and State residents, and the least immediate adverse effect you'll have on the individual ocean user. In my brief interviews, or questioning of SCUBA divers, I have found

resistance to an excise tax on their “diving” activity. However, almost everyone is willing to be taxed for the protection of the ocean, and for marine reserves in particular.

The difference is the perception of fairness. Most believe that taxing non extractive divers for use of the resource is countered intuitive to fairness. However, they see the ocean as a resource of all residents of the State, and they would be more than willing to carry their weight protect and heal the sea. The concern most express is the likelihood that if SCUBA divers are taxed as a group per se, that this taxation will only be used to fill the gap of monies that will be siphoned off by other programs outside the DFG. The common example is the State lottery, which was to be supplemental to the Department of Education, but ended up being part of the main budget.

Divers won’t mind paying excise taxes up front with everyone else, but will resist being targeted.

Research into the feasibility of these funding mechanisms, and more, will be required to formulate the comprehensive strategy for financing a statewide system of MPAs that the Blue Ribbon Task Force will submit to The Resources Agency in December 2005.

\*There is no doubt that recreational SCUBA divers are supportive of marine reserves and MPAs in general, and would be willing to share the burden for their success. However, if the wrong approach is imposed, there will be strong resistance. As part of the socioeconomic research, I would suggest a survey be made on how SCUBA divers would react to various forms of financial support for MPAs. I would be most willing to lend support to this effort. However, I’m sure the social scientist involved in the MLPA process are better equipped to advise in this process.